

NON-COMPLIANCE WITH INTERNATIONAL MACHINERY FOR THE PROTECTION OF HUMAN RIGHTS AND THE ANTI-TORTURE ACT IN NIGERIA: AN APPRAISAL

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Abstract

The concept of protection of human rights in Nigeria seems elusive. Public officers statutorily saddled with the responsibility of protecting citizens and their rights guaranteed by the Constitution are now complicit in the violation of human right. In other words, most public officers are the main perpetrators of the infringement of such rights. This is contrary to the ombudsman awareness on human right and as clearly put by the afro-beat singer: Fela Anikulapo Kuti 'human right is my property'. It is the view that human right is so sacrosanct that God abhors anyone who takes the life of another. There is a plethora of cases of violation of human rights by public officers in Nigeria. This is notwithstanding the fact that Nigeria has adopted and ratified several International Human Rights Instruments. Consequently, the applicability of human right to governance is yet to attain international best practices. This article x-rayed the non-compliance of some Nigerian public officers and agencies of government with the provisions of the African Charter on Human and People's Rights, the Constitution of the Federal Republic of Nigeria and the Anti-Torture Act. It is recommended inter alia that stiffer punishments should be meted on human rights violators.

1.0 Introduction

In order to achieve the guarantee and protection of human rights, the international community under the auspices of the United Nations has established certain principles aimed at the protection of human rights. These principles covered by the African Charter on Human and Peoples Rights have also been domesticated in Nigeria.¹ Flowing from these time-tested principles, the definition of international human rights law has been given as the law which deals with the protection of individuals and groups against violations by governments of their internationally guaranteed rights.² The safeguard of these rights which are fundamental to human existence was further emphasised by the enactment of the Anti-Torture Act in 2017. However, it is pertinent to underscore that enforcement of these laws is more important than been enacted. This is why a law,

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¹ Laws of the Federation of Nigeria, 2004. Cap A9

² M.T Ladan, *Materials and Cases on Public International Law* (Nigeria: Ahmadu Bello University Press Ltd, 2007) 169.

no matter how well enacted may be described as dead, if it is not active; for example the law of bigamy in Nigeria.³

It is submitted that if nothing is done fast to activate the Anti-Torture Act, it may also become dead as the law on bigamy, where the practice of torture and inhumane treatment against citizens is cultivated as a culture and way of life of law enforcement agencies and agents. In this appraisal, it is important to consider a conceptual framework of certain terms, including international, human right, right to development, machinery, among others.

2.0 Definitions

The term, 'International' means 'common to', 'involving or used by two or more nations', 'known or operating in more than one country'.⁴ In our view, international means 'the goings-on' between two or more countries. Machinery means the organisation of various processes so that a certain purpose may be fulfilled.⁵ In our view, machinery means the various approaches used in the achievement of a given task or goal. Human Rights are rights which a person has simply because he is a human being.⁶ Umozurike defines human rights as claims which are invariably supported by ethics and which should be supported by law, made on society, especially by its official managers, by individuals or groups on the basis of their humanity.⁷ The Black's law Dictionary definitions of human rights were stated by Niki Tobi, JCA (as he then was) in *Mojekwu v Mojekwu*⁸ as:

Something of which no one may be deprived without a great affront to justice; there are certain deeds which should never be done, certain freedoms which should never be invaded, something which is suppressively sacred'.

In the view of Cranston, 'a human right by definition is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human'.⁹ Thus, human rights are those rights which are innate in man as given by God and which cannot be removed therefrom. These include: right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of association, right to freedom of movement, right to development among others.

³ Notwithstanding the Statutory provisions on bigamy in section 370 of the Criminal Code Act, Cap C38, LFN, 2004, it is doubtful whether the law is active because of the customary practice that a man can take more than one wife.

⁴ The New Webster's Dictionary of the English Language (USA International Edn., 2000) 505

⁵ *Ibid*, 596

⁶ Francis, T. *Get Back Your Rights* (Nigeria: Pearl Publishers, 2013) 7.

⁷ Umozurike, UO *The African Charter on Human and Peoples Right* (London: Kluwer Law International Hague, 1997) 5

⁸ (1995) 5NWLR (Pt.512) 283

⁹ M.W. Cranston, *What are Human Rights?* (London: Bodley Head, 1973)36 accessed 11/04/2018 from <http://www.globalization101.org/uploads/File/HumanRights/humanrights.pdf>, accessed 25 March, 2013

The right to development considered as a third generation right¹⁰ relates to the environment and its development. Stockholm Declaration on the human environment was the first instrument to show that the environment is an aspect of human rights. Its principle 1 states that:

Man has the fundamental rights to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

Similarly, section 20 of the 1999 Nigerian Constitution, 1999 (as amended)¹¹ captures this right thus:

The state shall protect and improve the environment and safeguard the water, air, and land, forest and wild life of Nigeria.

Furthermore, Article 24 of the African Charter on Human and Peoples' Rights states:

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social, and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights. All peoples shall have the right to a general satisfactory environment.

From the foregoing, it is important to state that in one article, the African Charter on Human and Peoples Rights captured the classification of rights into three generations. The Charter having been ratified in Nigeria in Chapter A9, Laws of the Federation of Nigeria, 2004 is fully enforceable.

3.0 The African Charter on Human and Peoples Rights

The African Charter also known as the Banjul Charter named after Banjul, Gambia's capital where the Charter was drafted was adopted in June 1981 at the 18th conference of Heads of State and Government of the OAU.¹² It came into operation in October 1986. A Protocol to the Charter establishes an African court on Human and people's Rights which was adopted in 1998. The protocol came into force in 2004 with all states parties to the African Union being eligible to become parties to the Charter and the Protocol.¹³ The Charter also contains a number of collective rights, the third generation rights, as well as the important and well-established rights of people to existence and to self-determination.¹⁴

¹⁰ The first generation rights are seen as the freedom from various governmental and State abuse and comprises of the political and liberty rights. The second generation rights are economic rights which deal with essentials for daily living, such as health, education, employment and shelter. See. Francis, T. *Get Back Your Rights* (Nigeria: Pearl Publishers, 2013) 7

¹¹CFRN 1999, Section 20

¹² Now the African Union, since 2002.

¹³ Odinkalu, P and Christenen, K, 'The African Commission on Human and People's Rights: The Development of its non-state Commission Procedures' 20 HRQ (1998) 237.

¹⁴ACHPR, Art. 20 (1) – (3) of the ACHPR

4.0 Analysis of Some Rights in the African Charter

The African Charter can be divided into three parts. Part one contains the rights and duties of the individual, part two considers the roles and functions of the African Commissions on Human and People's Rights (the Commission), whereas part three provides for general procedural provisions. The principal executive organ for the implementation of the Charter is the Commission, established as such.

By Article 1 of the Charter, States parties recognize the rights, duties and freedoms in the Charter and undertake to adopt legislative or any other measures of compliance. The subsequent articles provide other rights, including right to: non- discrimination;¹⁵ equality before the law;¹⁶ respect for life and the integrity of the person;¹⁷ freedom from exploitation and degradation, including slavery, torture and cruel, inhuman or degrading punishment;¹⁸ liberty and security of the person;¹⁹ fair trial;²⁰ freedom from retrospective punishment;²¹ freedom of conscience, the profession and free practice of religion;²² receive information;²³ express and disseminate opinions;²⁴ freedom of association;²⁵ freedom of assembly;²⁶ freedom of movement;²⁷ leave any country and the right to return to one's country;²⁸ seek and obtain asylum;²⁹ prohibition of mass expulsion;³⁰ participate in government;³¹ equal access to public property and services;³² property;³³ work;³⁴ health;³⁵ education;³⁶ participate in the cultural life of one's community;³⁷ Others are the duty of the state to promote and protect the moral and traditional values recognized by the community;³⁸ recognition of family as the natural unity and basis of society;³⁹ right of the family to be assisted as a custodian of morals and traditional values;⁴⁰ protection of the rights of woman and children;⁴¹ rights of the aged and disabled;⁴² people's rights to equality;⁴³ people's right to existence;⁴⁴ people's right to self-determination;⁴⁵ people's right to freely acquire wealth and natural

¹⁵*Ibid*, Article 2

¹⁶*Ibid*, Article 3

¹⁷*Ibid*, Article 4

¹⁸*Ibid*, Article 5

¹⁹*Ibid*, Article 6

²⁰*Ibid*, Article 7(1)

²¹*Ibid*, Article 7(2)

²²*Ibid*, Article 8

²³*Ibid*, Article 9(1)

²⁴*Ibid*, Article 9(2)

²⁵*Ibid*, Article 10

²⁶*Ibid*, Article 11

²⁷*Ibid*, Article 12(1)

²⁸*Ibid*, Article 12(2)

²⁹*Ibid*, Article 12(3)

³⁰*Ibid*, Article 12(5)

³¹*Ibid*, Article 13(1)

³²*Ibid*, Article 13 (2) and (3)

³³*Ibid*, Article 14

³⁴*Ibid*, Articles 15

³⁵*Ibid*, Article 16

³⁶*Ibid*, Article 17(1)

³⁷*Ibid*, Article 17(2)

³⁸*Ibid*, Article 17(3)

³⁹*Ibid*, Article 18(1)

⁴⁰ *Ibid*, Article 18(2)

⁴¹*Ibid*, Article 18(3)

⁴²*Ibid*, Article 18(4)

⁴³*Ibid*, Article 19

⁴⁴*Ibid*, Article 20(1)

⁴⁵*Ibid*, Article 20 (1)-(3)

resources;⁴⁶ people's right to economic, social and cultural development;⁴⁷ people's right to national and international peace and security;⁴⁸ and people's right to a general satisfactory environment.⁴⁹

5.0 Non – discrimination and equality before the law

Article 2 of the African Charter provides for the right to non – discrimination, which represents the core of modern human rights law. It provides:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

It is important to emphasize that the terms used in the article are not exhaustive. Other possible grounds of discrimination include: age, disability and sexual orientation.⁵⁰ Similarly, another ground of discrimination is the term 'fortune' which means change especially regarded as a power affecting people's lives.⁵¹ Certain sections of the community also suffer frequent discrimination usually faced by women and children, following which the protection of their rights on the basis of equality is an important concern.⁵² The rights of women and children in the context of African Regional Human Rights Law have been further expanded by the protocol to the African Charter on Human and People's rights on The Rights of Women in Africa⁵³ and the African Charter on the Rights and Welfare of the Child.⁵⁴

Furthermore, the African Union has expressed its interest in promoting gender equality. The constitutive Act of the AU provides that one of the principles of the Union is the 'promotion of gender equality'.⁵⁵ The right to non-discrimination is further emphasised by the provision of Article 3 in terms of equality of all individuals before the law, and equal protection of the law.

Non-discrimination and equality principles also encapsulate concept of fairness in trial and freedom from retrospective punishment. The right to fair trial entails the right of every individual to have his cause heard; to appeal to competent national organs, to defence, including the right to be defended by counsel of his choice; and to be tried within a reasonable time by an impartial court

⁴⁶*Ibid*, Article 21(1)

⁴⁷*Ibid*, Article 22

⁴⁸*Ibid*, Article 23

⁴⁹*Ibid*, Article 24

⁵⁰R. Murray & F. Viljoen, 'Towards Non-Discrimination on the Basis of Sexual Orientation: The Normative Basis and Procedural Possibilities Before the African commission on Human and People's Rights and the African Union' 29 Human Rights quarterly (2007) 86

⁵¹ Oxford Advanced Learner's Dictionary of current English (oxford university press, 1989) 486

⁵²V. Bueren, *The International law on the Rights of the Child* (London: Martinus Nijhoff Publishers, 1995) 402

⁵³ Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa, Maputo, 13 September 2000 OAU Doc. CAB/LEG/66.6(2000)

⁵⁴ African Charter on the Rights and Welfare of the Child, Addis Ababa, Ethiopia, July 1990 OAU Doc. CAB/LEG/24.9/49/1990) entered into force on 29 November 1999.

⁵⁵*Ibid*, Article 4 (1)

or tribunal. Furthermore, fair trial implies the cardinal principle of natural justice that no one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. Consequently, no penalty should be inflicted for an offence for which no provision was made at the time it was committed.

6.0 Right to life and prohibitions of torture and slavery

The right to life which is the supreme human right is provided by Article 4. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. The article in recognizing the inviolability of human life confirms the entitlement of every one to the right to life and dignity of his person. However, the Article does not address some fundamental issues as there is no explanation of the meaning of the term 'life' and it is not clear the extent to which the rights of the unborn child are protected.⁵⁶

Article 5 provides for the right to the respect of dignity in human beings. It also prohibits slavery, slave trade, torture, cruel, inhuman or degrading treatment or punishment and treatment. In the Zimbabwean Supreme Court decision in *State v Ncube & Ors*⁵⁷ three persons had been found guilty of offences against children (the rape of an unspecified number over a period of two and a half years). All three men were sentenced to significant terms of imprisonment with labour and were also awarded sentences of whipping of six strokes. Their appeal to the Supreme Court concerning the sentence imposed was upheld. According to the court, whipping as a punishment violated section 15(1) of the Zimbabwean Constitution, a provision which prohibits torture and inhuman or degrading treatment or punishment.

The Charter provides for the rights to liberty and to the security of person, Article 6 provides that every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously spelt out by law.

In particular, no one may be arbitrarily arrested or detained. The right to liberty and security of person is an important human right and forms an essential ingredient of the human rights. However, the exception clause 'for reasons and conditions laid down by law' appears ambiguous and unrealistic, because the reasons and conditions are not provided in the Charter.

7.0 The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) hereinafter referred to as the Nigerian Constitution⁵⁸ is laudable for enshrining human rights provisions. This is particularly so as the Constitution recognises the classification of human rights into three broad categories. For example, Chapter IV of the Constitution enacts the civil - political rights contained in Articles 3 to

⁵⁶ Rehman, J. *International Human Rights Law* (London: Pearson Education Limited, 2010) 316.

⁵⁷ (1987) 2 ZLR 246

⁵⁸ CFRN 1999, Cap. C23, LFN, 2004 (as amended)

21 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights (ICCPR), as fundamental rights. It is important to emphasise that the Constitution specifically terms these rights as ‘Fundamental Rights’ and not Fundamental Human Rights as erroneously used by many. As contained in the Constitution, the rights include: right to life, which presupposes that humans have a right to live in freedom and safety.⁵⁹ From this, no person is supposed to be killed, especially when the verdict to kill is not from the Court. This is based on the premise that no person created life, following which no person should take another’s life.⁶⁰ Next in sequence is the right to dignity of human persons, which prohibits torture of an accused person while in detention in order to extract any information that will be used in incriminating the accused person.⁶¹ Others are: right to personal liberty;⁶² right to fair hearing;⁶³ right to private and family life;⁶⁴ right to freedom of thought, conscience and religion;⁶⁵ right to freedom of expression;⁶⁶ right to freedom of association;⁶⁷ right to freedom of movement;⁶⁸ right to freedom from discrimination;⁶⁹ right to acquire and own property anywhere;⁷⁰ right to compensation for compulsory acquisition;⁷¹ and right to seek redress in a Court of law.⁷²

8.0 The Anti-Torture Act⁷³

The Anti-Torture Act 2017 was passed by the 8th National Assembly and signed into law by President Muhammadu Buhari on December 29, 2017. Prior to the coming into effect of the Act, there was no specific law in Nigeria with the sole objective of prohibiting and punishing acts of torture and other forms of cruel, inhuman or degrading treatment. Although, section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that every person is entitled to respect for the dignity of his person, following which no person shall be subjected to torture or to inhuman or degrading treatment; the Constitution did not explicitly state that the freedom from torture, cruel and inhuman treatment is a non-derogable right. This perhaps explains why the act of torture, cruel, inhuman and degrading treatment by law enforcement officers continue unabated. Thus, the Anti-torture Act fills this lacuna by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment a non-derogable right.⁷⁴

⁵⁹*Ibid*, Section 33

⁶⁰ Matthew 5:21- You have heard that it was said to those of old, ‘You shall not murder, and whoever murders will be in danger of the judgment.

⁶¹CFRN 1999, s 34

⁶²*Ibid*, s 35

⁶³*Ibid*, s 36

⁶⁴*Ibid*, s 37

⁶⁵*Ibid*, s 38

⁶⁶*Ibid*, s 39

⁶⁷*Ibid*, s 40

⁶⁸CFRN 1999, s 41

⁶⁹ *Ibid*, s 42

⁷⁰*Ibid*, s 43

⁷¹*Ibid*, s 44

⁷²*Ibid*, s 46

⁷³CAP A2 Laws of the Federation of Nigeria, 2004.

⁷⁴ C. Okeke, Anti-Torture Act 2017: Issues, Implication for Police officers ‘Vanguard’ Wednesday May 31, 2018.

The law places an obligation on government to ensure that all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subjected to any form of physical/mental torture or intimidation or any act that impairs his free will⁷⁵. It admonishes government to fully and not partially adhere to domestic and international instruments to which Nigeria is a State party on absolute condemnation and prohibition of torture⁷⁶.

The law is clear that no individual's right should be violated by a law enforcement officer, including when it has to do with the investigation of an act which is prohibited by law. From the Zimbabwe case *supra*, it is clear that the judgment of a lower court was overturned because the penalty of whipping is an act of torture and contrary to their law.

Torture is said to be committed when an act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or a confession from him or a third party.⁷⁷ It is immaterial whether the offence committed by such an individual warrants the police officers to mete out any pain or injury on the culprit in order to elicit any useful information as to the commission or omission of an act. Thus, the law prohibits any form of torture on an accused or suspect in order to get any useful information that may help the police in discharging their functions. Since torture is officially an offence,⁷⁸ it follows therefore that a police officer can be prosecuted for torture; aiding, abetting or procuring any person to commit torture. A police officer and or any other law enforcement officer can no longer rely on emergency powers or 'orders from above' as justification for using torture to obtain information.

Torture may be physical which refers to cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or more parts of the body.⁷⁹ Thus, torture could be systematic beatings, head-banging, punching, kicking, striking with rifle butts and jumping on the stomach,⁸⁰ electric shocks,⁸¹ burning by electrically heated rods, hot oil, cigarette, acid, rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on wounds.⁸²

Again, any person who participates in the infliction of torture or who is present during the commission of the act is liable as the principal.⁸³ A superior military, police or law enforcement officer or senior government official who issues an order to lower ranking personnel to torture a victim for whatever purpose is equally liable as the principal.⁸⁴ In the same vein, the immediate

⁷⁵ S. 1 (a) Anti-Torture Act 2017.

⁷⁶ *Ibid* s.1(b)

⁷⁷ Anti-Torture Act, s. 2(1) (a).

⁷⁸ See sections 2 and 3 of the Criminal Code Act, Chapter C 38, Laws of the Federation of Nigeria, 2004.

⁷⁹ *Ibid*, s 2(2) (a)

⁸⁰ *Ibid*, s 2(2) (i)

⁸¹ *Ibid*, s 2(2) (iii)

⁸² *Ibid*, s2(2) (iv)

⁸³ *Ibid*, s 7 (1)

⁸⁴ *Ibid*, s 7 (2)

commanding officer of a unit of the security or law enforcement agencies is held liable as an accessory to the crime for any act or omission or negligence on his part that may have led to the commission of torture by his subordinates.⁸⁵

The various legislations on the protection of human rights are supposed to be complied with to the latter. However, these laws are mostly never complied with, which leads to the inhuman treatments on human beings. This is because the authorities or persons who violate human rights are most times left out of the hook.

9.0 The Case for Chima⁸⁶ and the Ikoku Four⁸⁷

It is pertinent to state that the rights of one Mr. Chima Ikwunado and the Ikoku four were allegedly violated by some police officers attached to the Eagle Crack Team at the Mile 1, Diobu Police Station in Port Harcourt, Nigeria. The police officers were said to have arrested and detained these young men without charging them to Court until there was a public outcry. The traders and artisans based at Oluobasanjo road, otherwise called Ikoku in Port Harcourt protested against the detention and inflicting of bodily injuries on their colleagues which eventually resulted to the death of Chima and constituted a violation of their fundamental rights as enshrined in the Constitution of Nigeria as amended, the African Charter on Human and People's right and preserved by the Anti -Torture Act, 2017.⁸⁸

According to available media reports, which have not been debunked or countered by the Nigerian Police, Chima, now deceased and the four others were arrested while taking a vehicle owned by Chima's client on test drive after repairs, when the police officers stopped, arrested and detained them. In order to justify their acts, the police alleged that the five men were arrested for stealing two cars, concealed the fact of torturing them in detention to obtain confessional statement of admission of the crime.⁸⁹ After the death of Chima from alleged police brutality in the cell, the officers subsequently charged their living victims to Court on allegation of robbery, notwithstanding that the vehicle owner told the police that their victims were his mechanics, following which his vehicle was released to him.

In *Gusau & Ors v. Umezuruike*⁹⁰ the Court held that detention, no matter how brief, is a breach of fundamental right. This can only be so if the detention is adjudged wrongful or unlawful in the first place; that is, if there is no legal foundation to base the arrest and/or detention of the applicant.

⁸⁵ *Ibid*, s 7 (4)

⁸⁶ Chima Ikwunado, a motor vehicle mechanic (now deceased) was arrested in Port Harcourt on December 19, 2019 over allegations of armed robbery, car theft and cultism.

⁸⁷ These are four auto-mechanics, namely: Victor Ogbonna, Osaze Friday, Ifeanyi Osuji and Ifeanyi Onyekwere who were arrested alongside Chima Ikwunado over allegations of armed robbery, car theft and cultism.

⁸⁸ An Act to penalize the acts of torture and other cruel, inhuman and degrading treatment and prescribe penalties for such acts; and for related matters.

⁸⁹ Anonymous, 'Rage as Ikoku 4 Return with Wound from Alleged Police Torture', The Tide Friday, January 31, 2020.

⁹⁰ (2012) LPELR – 8000 (CA) at 36, paras B – D, per Mbaba, JCA.

In the case of Chima and the Ikoku four, the question is, ‘why did the police release a vehicle to its owner who exonerated the detainees and still charged them to Court for a crime they did not commit? In the case of *Ejiofor v. Okeke*⁹¹ the Court held that where there is evidence of arrest and detention which were done or instigated by the respondent, in an action for enforcement of fundamental rights application, it is for the respondent to show that the arrest and detention were lawful.⁹² On this fact. Importantly, the living Ikoku four arraigned in a Magistrate Court in Port Harcourt were discharged and acquitted based on a ‘no case submission’ by the Director of Public Prosecution (DPP) of Rivers State.

The Nigerian police are in the habit of constantly molesting citizens through various tortious acts in a bid to elicit incriminating information from suspects of a supposed crime. In this wise, Amnesty International had accused a unit of the Nigerian police, the Special Anti-Robbery Squad (SARS) of systematically torturing detainees as a means of extracting confessions and lucrative bribes.⁹³ The group accused corrupt SARS officers of subjecting detainees to horrific torture in the form of starvation, hanging, beatings, shootings and mock executions. In the report, a research fellow with Amnesty International gave his findings that their research uncovered a pattern of ruthless human rights violation, where victims were arrested and tortured until they either make a confession or pay officers a bribe to be released. This research was carried out in Anambra, Enugu and Abuja. The organization called on the police authorities in several meetings, including two officers with the Inspector General of Police and they denied the use of torture. In all, the organization urged the police to desist from such use of force as it violated the human rights provisions of citizens as enshrined in the Constitution. By its assessment, Nigeria has a lot to do in order to be at pace with the international world in respect of modern practices of human rights provisions.

The tortious acts by agents of public institutions have resulted to the death of some persons, including Chima Ikwunado. This is because many a time, the pains and injuries sustained become unbearable to an individual left unattended to medical facility. In *Mrs. Ganiat Amope Dilly v. Inspector General of Police & 6 Ors*⁹⁴ the appellant had brought an application in the High Court of Lagos State by way of an Originating Summons under the Fundamental Rights (Enforcement Procedure) Rules, 2009 seeking to enforce the right to life of her son who died in police custody upon his arrest by the police. Hon. Justice O.H. Oshodi heard the application and dismissed it on the 9th October, 2012 on the grounds that the Appellant cannot enforce the right to life of her deceased son. Upon dismissal of the application, the Appellant filed a Notice of Appeal dated 15th October, 2012 setting out three grounds of appeal. The brief facts were that the Appellant filed an application under the Fundamental Rights to demand compensation for her son who at the

⁹¹[2000] 7 NWLR (Pt.665) 363

⁹²*Agbakoba v. Director, SSS* [1994] 6 NWLR (Pt.351) 45

⁹³G. Obike, ‘Amnesty International accuses SARS of torture, corruption’, The Nation Thursday, September 22, 2016.

⁹⁴ [2016] NGCA 21

instigation of the 5th and 7th Respondent was arrested by the police and refused bail until the Appellant gave the police the sum of N50,000.00 an amount she could not raise. When she finally got to the Police Station, she was informed that her son had died of cardiac arrest while in the prison custody and his corpse was sent to the hospital without recourse to her. The Appellant informed them that her son was hale and hearty; and that his death was as a result of the torture meted on him. The appellant sought for the following orders one of which is that a declaration that the merciless beating and torture of the Applicant's son by men and officers of the 1st, 2nd and 3rd Respondent and the deprivation of medical treatment and sustenance which resulted in the untimely death of the Applicant's son in the custody of the 3rd Respondent is wrongful, illegal, unconstitutional, null and void as it violates the Applicant's son constitutional rights under Section 33, 34, 35, 39 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Consequently, the Applicant prayed the Court for an order of mandatory injunction compelling the 1st and 2nd respondents to institute disciplinary action and sanction against the 3rd respondent for negligently abdicating her statutory responsibility which resulted in the untimely death of her son. The Court of Appeal allowed the appeal and set aside the judgement of the trial Court. The appellate Court also awarded the sum of N5, 000,000.00 as compensation in favour of the Applicant being damages for breach of the right to life of her deceased son, Akindele Dilly.

The decision in the foregoing case is in tandem with the precedent in *Ozide & Ors v. Ewuzie & Ors*⁹⁵ where the Court held that it is trite law that damages in compensation, legally and naturally follow every act of violation of a citizen's fundamental right. There should be no mercy at all on public officers who violate the laws on the protection of human rights with impunity as this will serve as a deterrent to all other public officers, particularly the Nigerian police who are in the habit of torturing Nigerian citizens.

Apart from the foregoing decision of the Court, which awarded compensation to a parent on the breach of the right to life of her deceased son, it is settled law that torture resulting in the loss of life of a person is considered as murder⁹⁶ and should be tried as such and punished⁹⁷ under the provisions of the relevant statute.⁹⁸ This is akin to violating the right of appeal of a convict, by executing him, during the pendency of his appeal, without allowing him to exhaust the opportunity of appealing his conviction up to the Supreme Court.⁹⁹ Accordingly, any person who contravenes the provision of the Anti-Torture Act commits an offence and is liable on conviction to a term of imprisonment not exceeding 25 years.

⁹⁵ (2015)LPELR 24482 CA

⁹⁶ By s. 316 of the Criminal Code Act, Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say – (1) if the offender intends to cause the death of the person killed, or that of some other person; (2) if the offender intends to do to the person killed or to some other person some grievous harm, (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life, (5) if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid is guilty of murder.

⁹⁷ *Ibid* s. 319 (1) Subject to the provisions of this section any person who commits the offence of murder shall be sentenced to death.

⁹⁸ Anti-Torture Act, s.8 (2).

⁹⁹ *Bello v. AG Oyo State* (1986) 12 SC 1 at 70-71; [1980] 5 NWLR (Pt. 45) 828

10.0 Conclusion

Having considered the laws enacted for the purpose of protecting human rights against inhuman and tortious acts, it is settled beyond per adventure that the problem of tortious acts, cruel and inhuman treatments by security agents against citizens is not that of paucity of laws against such acts. Instead, the problem is how to enforce existing laws especially where the violations are perpetrated by law enforcement officers who are supposed to protect the citizens against intimidation and inhuman treatments.

The police officers of the Eagle Crack Team namely: Ayogu Fidelis, Ake Chibuzor, Egbunefu Felix, and Rose Godwill who allegedly violated the right of Chima by inflicting several bodily injuries which eventually resulted to his death were charged to Court. It is commendable that the High Court of Rivers State presided by Honourable Justice Adolphus Enebeli upon finding of the defendants guilty of the murder of Chima accordingly sentenced them to death by hanging without any option of fine. In the same vein, it is submitted that the Police as an institution should be ordered to pay punitive compensation to the family of the victims of their tortious and murderous acts.¹⁰⁰ Justice in the society is seen to be fully served where alleged offenders are made to face the full wrath, where complicit and guilty of the alleged offence. Justice should also be manifestly done by completing investigation swiftly because justice delayed is akin to justice denied.

11.0 Recommendations

- 1) To address the problem of violation of human rights in Nigeria, stiffer punishment should be meted on perpetrators of such acts. For instance, the 25 years imprisonment for the offence of torture as stipulated in the Act is not commensurate to tortious acts which result to murder of suspects. Thus, any enforcement officer found guilty of killing an individual through tortious act should also be executed by an order of a competent Court. This will make it commensurate to the tortious act leading to murder. Consequently, there is the need for an amendment to the provisions of section 9 of the Anti-Torture Act.
- 2) The Attorney-General of the Federation and other relevant stakeholders should work together to put in place mechanisms, including unscheduled visits to detention facilities of security agencies to ensure compliance with human rights protection law so that torture can be properly checked, if not eliminated in Nigeria.
- 3) There should be established a specialised Human Rights Court to handle human rights matters expeditiously.

¹⁰⁰ Section 35(6) of the Constitution of Nigeria, 1999 (as amended) provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, 'the appropriate authority or person' means an authority or person specified by law, for instance the Nigerian police.